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SUBJECT: IMPROVING CONSULAR NOTIFICATION FOR DRUG  
TRAFFICKING ARRESTS

Refs: (A) 2005 International Narcotics Strategy Control  
Report, (B) 01 STATE 10160, (C) 04 PARIS 5995

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SUMMARY  
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1. Summary. Drug trafficking violations continue to account for more than 75 percent of AmCit arrests in France despite a general decline in detentions of our citizens. While undertaking to improve our understanding of arrest, sentencing and detention procedures in France, post's consular section concluded it was equally important to address the issue of prompt notification to the Embassy of detained drug trafficking suspects. In the following overview, post reports on the specific GOF procedures related to drug trafficking arrests that will help us better address inquiries from prisoners and other sources. Paragraphs 2 through 15 provide an up-to-date resource of French judicial procedures concerning drug trafficking. In paragraph 16, we describe our efforts to receive more timely notification through implementation of an "Action Plan". The "Action Plan" specifically describes measures we are taking to establish and strengthen contacts with GOF law enforcement agencies. Through the improved channel of communication, we hope gain clarification on their implementation of the Vienna Convention on Consular Relations of 1963 (VCCR) and the 1966 Franco-American Bilateral Consular Convention (BCC). End summary.

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ARREST PROCEDURES  
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2. Customs or drug enforcement authorities typically initiate a drug trafficking arrest in France. French law enforcement also works frequently in cooperation with Interpol, the US Drug Enforcement Administration (DEA), or other foreign drug enforcement agencies to combat international drug trafficking networks. Most AmCit drug trafficking suspects are apprehended at Charles De Gaulle airport in Paris. Other arrests are made at seaports in southern France, at sea by French Coast Guard or by traffic stops and checkpoints initiated by French Customs on major road and rail trafficking corridors-- notably Belgium, Spain and Great Britain (Ref A). By law, French law enforcement authorities must inform a detainee of the reason for his arrest in a language he understands. There is however an exception provided for French Customs. Customs is allowed to detain individuals without stating any reason or cause for up to 24 hours.

3. Once Customs turns a suspected drug trafficker over to drug enforcement authorities, the detainee can be held for an additional 96 hours before he must be brought before a judge for charges. (Note: For most other crimes, it is 72 hours. End note.) This custody period is called the "Garde a Vue." French law also allows the prosecutor to suspend the detainee's right to legal counsel and family notification for up to 72 hours during the "Garde a Vue" period if he determines that allowing these rights would compromise the investigation.

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CONSULAR NOTIFICATION IN THEORY AND PRACTICE  
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4. Based on our experience, in practice the GOF interprets "detention," as indicated in Article 36 of the VCCR and Article 34 of the BCC, to be the moment an arrestee is taken out of "Garde a Vue" and sent to prison after he is charged with a crime. Since it can take up to five days before this occurs, several more days for the prison to process a letter notifying us of an AmCit's arrest, and another two or three days before we receive the letter, the GOF's notification practice exceeds the 72-hour timeframe that is our interpretation of "without delay" stated in the VCCR (Ref B). Post has in response developed an action plan detailed in paragraph 16, to reduce the lag between an alleged drug trafficker's detention and our notification by the GOF.

5. Currently in the vast majority of cases, the DEA provides the Embassy with information of an AmCit drug trafficking arrest. In addition, the French police, prisons, and courts will give us an official notification

about a third of the time. On very rare occasions, the prisoner's friends or family will inform post of the arrest.

¶6. Post receives arrest information from the DEA via "L'Office Central pour la Repression du Trafic Illicite de Stupefiants" (Central Office for Suppression of Illegal Drug Trafficking), the French drug enforcement agency commonly referred to as OCRTIS. The DEA and OCRTIS work very closely together by sharing intelligence and coordinating operations in France and internationally (Ref A). French police or Customs notify OCRTIS immediately whenever an AmCit drug trafficking suspect is detained. OCRTIS then contacts the DEA to verify whether the AmCit detainee is wanted on any charges in the US and to coordinate the conduct of the interrogation. The DEA in turn typically contacts post's consular section. In these cases, even though it is not an official notification, post receives prompt information about the AmCit's detention thanks to DEA's special working relationship with OCRTIS.

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INTERROGATION AND PRE-TRIAL DETENTION  
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¶7. OCRTIS interrogates prisoners during the "Garde a Vue" period. During the interrogation, an AmCit drug trafficking suspect is commonly offered the opportunity to cooperate with OCRTIS and the DEA. If the suspect provides useful information, his sentence will typically be cut in half. Suspected traffickers who choose not to cooperate do so most often because they fear retaliation from drug cartels to themselves or their families. A prisoner should not expect to go to trial any sooner because of his cooperation since there is currently no judicial "fast track" mechanism for alleged drug traffickers in the French justice system.

¶8. After a prisoner is taken out of "Garde a Vue" and brought before a judge, he will either be charged with a crime or released. If charged, the case is turned over to an Investigating Magistrate or "Juge d'Instruction." At this point, according to French law a foreign prisoner must be assigned an interpreter if he does not understand French. A Detention Magistrate or "Juge de la Detention" will oversee a detainee's transfer to jail pending the investigation and trial. French law does not allow bail for prisoners pending trial for drug trafficking charges meaning that they will remain in custody until their trial date.

¶9. AmCit prisoners arrested for drug trafficking go to trial on average 14-20 months after their arrest. Prisoners should anticipate at least a yearlong wait and as with all AmCit prisoners in France, expect very little information regarding the status of an eventual trial date. Accused drug traffickers may not plead guilty to receive an immediate sentence. However, France has recently implemented an instrument to plead guilty for misdemeanor crimes that may eventually be broadened to such felonies as drug trafficking. The idea is to ease the severe backlog of prisoners awaiting trial, meaning that it could also eventually help bring to trial more quickly even those who choose not to plead guilty.

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SENTENCING, DETENTION AND EARLY RELEASE  
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¶10. The maximum sentence possible for drug trafficking is 20 years. Though drug trafficking sentences in France will depend on such circumstances as type and quantity of drugs, cooperation, function in the trafficking organization and history of trafficking, the average sentence in 25 drug related cases at post dating back to 1996 was four years. The minimum and maximum sentences were respectively one and 18 years.

¶11. An Executive Sentencing Magistrate or "Juge d'Application des Peines" handles early release and probation issues. Once a prisoner has served half of his sentence, he may appear before a parole board or "Commission d'Application des Peines" to have his case reviewed for early release. The commission takes into account such factors as behavior, learning French, working, job offers and places to stay upon release. In 22 drug related cases dating back to 1996, prisoners served on average less than 60 percent of their sentences.

¶12. Convicted drug traffickers who gain early release are also subject to heavy customs' fines relative to the value of the drugs they were trafficking. Their release may be delayed because of this. The fines can be negotiated downward or the prisoner may not have to pay at all if he can prove total destitution. Customs has the final say on this and the prisoner may have to serve up to an additional two years if he does not or cannot pay.

¶13. Upon release, an AmCit prisoner is deported to his last

verified US residence or the nearest port of entry if he is not a French resident or national. Certain exceptions are made for drug traffickers who have cooperated with authorities and whose lives would be in danger if they returned to the US.

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SECOND PROSECUTIONS UPON REPATRIATION  
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14. An AmCit arrested and tried in France for drug trafficking may be prosecuted upon his return to the United States if he has also violated any US laws. This is most common for prisoners who have not cooperated with the DEA and OCRTIS. DEA and OCRTIS interrogators often use the threat of a second prosecution and sentence as a "hammer" to help get cooperation from suspected drug traffickers.

15. Cooperation does not guarantee immunity from eventual prosecution in the US. This is handled on a case-by-case basis and depends on the information provided. Prisoners are not tried upon repatriation from France if their crime has no venue in the US.

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PLAN OF ACTION  
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16. Post previously reported on its efforts to receive more regular notification from French prisons (Ref C). The results of these efforts have been successful in that we have not had any further problems with the specific prisons with which we have raised this issue. Yet because notification by prisons inevitably takes longer than 72 hours from the moment an AmCit is detained, post is now examining the process by which the GOF implements the VCCR and our BCC. In an effort to receive better notification without delay, post has developed the following action plan, which we present to the Department for its information:

- Consular officers will meet with their working-level contacts in the Foreign Ministry, the Interior Ministry, and the Justice Department to determine the GOF's legal interpretation of "detention" and "without delay" as stated in the VCCR and BCC. Specifically, post will attempt to learn whether customs detentions and "Garde a Vue" fall into the GOF's interpretation of "detention" and how long they give themselves to notify us of an AmCit arrest "without delay".

- After learning the GOF's interpretation of the VCCR, post will investigate how the GOF instructs its law enforcement agencies to implement the interpretation. We will then take specific actions based on what we learn. For example, if there is no GOF directive instructing law enforcement agencies and prisons on how to implement the convention, we will seek to have the GOF create one. If there is a GOF directive that law enforcement agencies and prisons are not properly adhering to, we will work with the GOF and the specific agencies to ensure proper implementation in the case of AmCit arrests.

- Specifically regarding drug trafficking arrests, the OCRTIS chief of operations expressed in a meeting with conoff that he agreed that the meaning of "detention" in the VCCR included the "Garde a Vue" period. However, he did not wish to receive a directive from the GOF stipulating arrest notification procedures to all VCCR signatories during the "Garde a Vue" period. We suggested a simple arrangement could be for OCRTIS to provide consular notification through a simple phone call directly to the consular section to supplement the arrest information we receive through the DEA. We will meet with OCRTIS again to follow up on this possible arrangement and reinforce our contact with them.

- Post will also schedule meetings with Customs officials to explore circumstances where they could provide consular notification of detained AmCits. We will suggest an arrangement where they could contact us upon an AmCits detention to verify his citizenship in an effort to further combat passport fraud and provide us the quickest notification possible of AmCit detention.

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